

Senate Bill No. 144

CHAPTER 186

An act to amend Sections 5517, 8183, 8280.1, and 9001.6 of, to add Section 8280.7 to, to repeal, add, and repeal Section 8279.1 of, and to repeal Section 8599.6 of, the Fish and Game Code, relating to fish.

[Approved by Governor August 2, 1997. Filed with
Secretary of State August 4, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 144, M. Thompson. Fish.

(1) Existing law prohibits the taking of anchovies in Humboldt Bay for any purposes, except that anchovies may be taken for live bait between September 1 and December 1, with certain conditions. Existing law provides that anchovies may only be taken in Humboldt Bay north of a line extending through channel markers 9 and 10 and that the annual seasonal take of anchovy shall not exceed 15 tons.

This bill would allow anchovies to be taken in Humboldt Bay for live bait between May 1 and December 1 and further allow anchovies to be taken for dead bait between May 1 and September 1. The bill would relocate the boundary line described above to be north of a line extending through channel markers 8 and 9 in Humboldt Bay. The bill would also specify that not more than 15 tons of anchovies may be taken between May 1 and September 1 and not more than 15 tons may be taken between September 1 and December 1.

(2) Existing law regulates the taking, possession, and sale of Dungeness crab for commercial purposes. In particular, existing law prohibits a vessel that is undocumented, or that is licensed or registered in another state, from taking or landing Dungeness crab in Fish and Game District 10 for commercial purposes after December 1 if the commercial crab fishing season has been delayed in this state or in a state for which the vessel is licensed to take, possess, or land Dungeness crab.

This bill would repeal that provision and, instead, would provide that no person shall take Dungeness crab for commercial purposes in specified ocean waters for 30 days after the opening of the Dungeness crab fishing season if the opening of the season has been delayed in those waters and that person has taken, possessed, or landed Dungeness crab in other specified waters prior to that opening. The bill would provide that a violation of these provisions shall not constitute a misdemeanor, instead, the bill would require the commission to revoke the permit of any person who violates these provisions.

(3) Existing law prohibits taking, possessing, or landing Dungeness crab for commercial purposes using Dungeness crab traps unless the owner has a Dungeness crab vessel permit for that vessel.

This bill, notwithstanding those provisions, would authorize the owner of a permitted vessel to contract for the use of a vessel for which a commercial boat registration has been issued, as specified, and for which a Dungeness crab vessel permit has not been issued to assist the crew of the permitted vessel in the deployment of Dungeness crab traps. The bill would prohibit an unpermitted vessel used for that purpose from possessing on board any equipment for the retrieval of Dungeness crab traps and from possessing on board at any time any Dungeness crab. Since a violation of these prohibitions would be a crime under other provisions of existing law, this bill would impose a state-mandated local program by creating new crimes.

(4) Under existing law, a violation of the Fish and Game Code is generally a misdemeanor. Existing law, which is to be repealed on January 1, 1999, prohibits taking of white sharks with specified exceptions.

This bill would continue that law beyond January 1, 1999, by repealing the repeal date. Since a violation of these provisions is a crime under existing law, this bill would impose a state-mandated local program by continuing in existence a crime that would otherwise be repealed.

(5) Under existing law, finfish may not be taken by traps for commercial purposes except pursuant to a valid finfish permit and in accordance with specified conditions. These conditions, which are to become inoperative on April 1, 1998, and are to be repealed as of January 1, 1999, include limitations on the number, size, location, and use of the traps.

This bill would extend the above dates to April 1, 2002, and January 1, 2003, respectively. Since a violation of these provisions is a crime under existing law, this bill would impose a state-mandated local program by extending the repeal date of a crime.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 5517 of the Fish and Game Code is amended to read:

5517. It is unlawful to take any white shark (*Carcharodon carcharias*), except under permits issued pursuant to Section 1002 for scientific or educational purposes.

SEC. 2. Section 8183 of the Fish and Game Code is amended to read:

8183. No anchovies may be taken for any purpose in Humboldt Bay, except under the following conditions:

(a) Anchovies may be taken for live bait between May 1 and December 1 and may be taken for dead bait between May 1 and August 31. The operator of a vessel may take anchovies only for use in his or her own fishing operation, except that the operator may make incidental sales of anchovies so taken to local sport fishermen for their use as bait.

This subdivision does not prevent the cooperative effort of two or more vessel operators or their crews working together with one net if each operator has complied with the notification requirement in subdivision (b).

(b) An observer who is an employee of the department shall inspect any bait operation and may halt that operation if the operation cannot be conducted without adversely affecting the game species of the bay. Notification of all bait operations shall be dispatched so as to be received by the department at least 12 hours prior to the commencement of the operation.

(c) Anchovies may be taken in Districts 8 and 9 only north of a line extending through channel markers 8 and 9 in Humboldt Bay.

(d) Not more than 15 tons of anchovies may be taken between May 1 and August 31 of each year and not more than 15 tons may be taken between September 1 and December 1 of each year.

(e) Only bait nets, as defined in Section 8780, shall be used to take anchovy.

(f) Any game fish caught incidentally in bait nets shall be released by use of a hand scoop net or by dipping the cork line.

An accurate record of all fishing operations shall be kept and is subject to inspection by the department.

The commission shall adopt any other regulation it determines is necessary to protect the Humboldt Bay anchovy resource.

SEC. 3. Section 8279.1 of the Fish and Game Code is repealed.

SEC. 4. Section 8279.1 is added to the Fish and Game Code, to read:

8279.1. (a) No person shall take, possess onboard, or land Dungeness crab for commercial purposes from any vessel in ocean waters in District 6, 7, 8, or 9 for 30 days after the opening of the Dungeness crab fishing season in California, if both of the following events have occurred:

(1) The opening of the season has been delayed pursuant to state law in California.

(2) The person has taken, possessed onboard, or landed Dungeness crab for commercial purposes, from ocean waters outside of District 6, 7, 8, or 9, prior to the opening of the season in those districts.

(b) No person shall take, possess onboard, or land Dungeness crab for commercial purposes from any vessel in ocean waters south of the border between Oregon and California for 30 days after the opening of the Dungeness crab fishing season in California, if both of the following events have occurred:

(1) The opening of the season has been delayed pursuant to state law in California.

(2) The person has taken, possessed onboard, or landed Dungeness crab for commercial purposes in Oregon or Washington prior to the opening of the season in California.

(c) No person shall take, possess onboard, or land Dungeness crab for commercial purposes from any vessel in ocean waters north of the border between Oregon and California for 30 days after the opening of the Dungeness crab fishing season in Oregon or Washington, if both of the following events have occurred:

(1) The opening of the season has been delayed in Oregon or Washington.

(2) The person has taken, possessed onboard, or landed Dungeness crab for commercial purposes in California prior to the opening of the season in ocean waters off Oregon or Washington.

(d) No person shall take, possess onboard, or land Dungeness crab for commercial purposes from any vessel in ocean waters off Washington, Oregon, or California for 30 days after the opening of the Dungeness crab fishing season in California, Oregon, or Washington, if both of the following events have occurred:

(1) The opening of the season has been delayed in Washington, Oregon, or California.

(2) The person has taken, possessed onboard, or landed Dungeness crab for commercial purposes in either of the two other states prior to the delayed opening in the ocean waters off any one of the three states.

(e) A violation of this section shall not constitute a misdemeanor. Pursuant to Section 7857, the commission shall revoke the Dungeness crab vessel permit held by any person who violates this section.

(f) This section shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends that date.

SEC. 5. Section 8280.1 of the Fish and Game Code is amended to read:

8280.1. (a) No person shall use a vessel to take, possess, or land Dungeness crab for commercial purposes using Dungeness crab traps authorized pursuant to Section 9011, unless the owner of that

vessel has a Dungeness crab vessel permit for that vessel that has not been suspended or revoked. This section does not apply to a commercially registered fishing vessel when it is being used solely to assist a permitted vessel transport or set traps.

(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

(1) A person, who has a commercial fishing license issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) that has not been suspended or revoked, who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel. This paragraph includes any person purchasing a vessel qualifying pursuant to this paragraph.

(2) A person who has a commercial fishing license issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) that has not been suspended or revoked, who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in one of the Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel in this state as documented by landing receipts delivered to the department pursuant to Section 8046, who the department finds to have been unable, due to illness or injury or any other hardship, to make a minimum of four landings in each of two of the previous three Dungeness crab seasons, and who, in good faith, intended to participate in the Dungeness crab fishery in those seasons.

(3) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets the requirements of Section 8101, and who, notwithstanding Section 8101, is, at the time of application, the owner of a fishing vessel that is not equipped for trawling with a net and that has been registered pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years. Not more than one Dungeness crab vessel permit shall be issued to any person qualifying under Section 8101 and all permits issued under Section 8101 shall, notwithstanding paragraph (1) of subdivision (a) of Section 8280.3, be nontransferable. A person qualifying for a permit under this paragraph shall have participated in the Dungeness crab fishery on or before March 31, 1994, as documented by landing receipts that were prepared in that person's name for not less than four landings of Dungeness crab taken in a crab trap in a Dungeness crab season and were delivered to the department pursuant to Section 8046. No person shall be issued a permit under this paragraph if that person has been issued a permit



under any other provision of this section for another vessel. For purposes of Section 8101, “participated in the fishery” means made not less than four landings of Dungeness crab taken by traps in that person’s name in one Dungeness crab season. The department shall separately identify permits issued pursuant to this paragraph and those permits shall become immediately null and void upon the death of the permittee. The department shall not issue or renew any permit under this paragraph to a person if the person failed to meet the participation requirements of four landings in one season prior to April 1, 1994, or has been issued a Dungeness crab permit for a vessel under any other paragraph of this subdivision.

(4) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets one of the following conditions:

(A) The person held a Dungeness crab permit issued pursuant to Section 8280 as it read on April 1, 1994, and participated in the Dungeness crab fishery between November 1, 1984, and April 1, 1994, and is the owner of a vessel that has been registered with the department in each of the 1991–92, 1992–93, and 1993–94 permit years but did not make landings or the department records do not indicate a minimum of four landings per season for three Dungeness crab seasons from that vessel or in that person’s name because of a partnership or other working arrangement where the person was working aboard another vessel engaged in the Dungeness crab fishery in California.

(B) The person held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, and is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and from which a minimum of four landings utilizing traps were made in at least one Dungeness crab season in the period between November 1, 1984, and April 1, 1994, and from which either four landings were made utilizing traps or landings in excess of 10,000 pounds were made utilizing traps in each of two other Dungeness crab seasons in that same period, as documented by landing receipts.

(C) The person held a Dungeness crab vessel permit issued under Section 8280 as it read on April 1, 1994, or was an officer in a California corporation that was licensed pursuant to Article 7 (commencing with Section 8030) as of April 1, 1994, and began construction or reconstruction of a vessel on or before January 1, 1992, for the purpose of engaging in the Dungeness crab fishery, including the purchase of equipment and gear to engage in that fishery in California. A person may be issued a permit under this condition only if the person intended in good faith to participate in the California Dungeness crab fishery, a denial of a permit would create a financial hardship on that person, and, for purposes of determining financial hardship, the



applicant is a nonresident and cannot participate with his or her vessel or vessels in the Dungeness crab fishery of another state because of that state's limited entry or moratorium on the issuance of permits for the taking of Dungeness crab.

(5) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, who made a minimum of four landings of Dungeness crab taken by traps in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, in his or her name in this state from a vessel owned by that person, as documented by landing receipts, who, between April 1, 1991, and January 1, 1995, purchased, contracted to purchase, or constructed a vessel, not otherwise qualifying pursuant to paragraph (1), (2), or (4), who has continuously owned that vessel since its purchase or construction, and who either (A) has used that vessel for the take of Dungeness crab in this state on or before March 31, 1995, as documented by one or more landing receipts delivered to the department pursuant to Section 8046, or (B) intended in good faith, based on evidence that the department and the review panel may require, including investment in crab gear, to enter that vessel in this state's Dungeness crab fishery not later than December 1, 1995. Not more than one permit may be issued to any one person under this paragraph.

(6) A person who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, who made a minimum of four landings utilizing traps in this state in each of three Dungeness crab seasons in the period between November 1, 1984, and April 1, 1994, in his or her name from a vessel operated by that person as documented by landing receipts, who currently does not own a vessel in his or her name, and who has not sold or transferred a vessel otherwise qualifying for a permit under this section. A permit may be issued under this paragraph for a vessel not greater in size than the vessel from which the previous landings were made, and, in no event, for a vessel of more than 60 feet overall length, to be placed on a vessel that the person purchases or contracts for construction on or before April 1, 1996. A permit issued under this paragraph shall be nontransferable and shall not be used for a vessel not owned by that person, and shall be revoked if the person (A) fails to renew the permit or annually renew his or her commercial fishing license issued pursuant to Section 7852 or (B) is or becomes the owner of another vessel permitted to operate in the Dungeness crab fishery pursuant to this section.

(c) The department may require affidavits offered under penalty of perjury from persons applying for permits under subdivision (b) or from witnesses corroborating the statements of a person applying for a Dungeness crab vessel permit. Affidavits offered under penalty



of perjury shall be required of an applicant if the department cannot locate records required to qualify under subdivision (b).

(d) No person shall be issued a Dungeness crab vessel permit under this section for any vessel unless that person has a valid commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked.

(e) Notwithstanding Section 7852.2 or subdivision (e) of Section 8280.2, the department may issue a Dungeness crab vessel permit that has not been applied for by the application deadline if the department finds that the failure to apply was a result of a mistake or hardship, as established by evidence the department may require, the late application is made not later than October 15, 1995, and payment is made by the applicant of a late fee of two hundred fifty dollars (\$250) in addition to all other fees for the permit.

(f) The department may waive the requirement that a person own a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years for one of those required years under this section only if the vessel was registered and used in the California Dungeness crab fishery during the registration year immediately prior to the year for which the waiver is sought and was registered and used in the California Dungeness crab fishery after the year for which the waiver is sought and if the reason for the failure to register in the year for which the waiver is sought was due to a death, illness, or injury, or other hardship, as determined by the review panel, that prevented the vessel from being registered and operated in the fishery for that registration year.

(g) If any person submits false information for the purposes of obtaining a Dungeness crab vessel permit under this section, the department shall revoke that permit, if issued, revoke the person's commercial fishing license that was issued pursuant to Section 7850 for a period of not less than five years, and revoke the commercial boat registration for a period of not less than five years of any vessel registered to that person pursuant to Section 7881 of which that person is the owner.

(h) This section shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 8280.7 is added to the Fish and Game Code, to read:

8280.7. Notwithstanding Section 8280.1, the owner of a vessel, who has a Dungeness crab vessel permit for that vessel that has not been suspended or revoked, may contract for the use of a vessel that is registered pursuant to Section 7881 and for which a Dungeness crab vessel permit has not been issued for the purpose of assisting the crew of the permitted vessel in the deployment of Dungeness crab traps.

An unpermitted vessel used for the purpose of assisting in the deployment of Dungeness crab traps pursuant to this section shall not have on board any equipment for the retrieval of Dungeness crab traps and shall not have on board at any time any Dungeness crab.

SEC. 7. Section 8599.6 of the Fish and Game Code is repealed.

SEC. 8. Section 9001.6 of the Fish and Game Code is amended to read:

9001.6. (a) A finfish trap permit issued pursuant to Section 9001.5 authorizes finfish to be taken with finfish traps only subject to the following limitations:

(1) No lobster shall be possessed aboard or landed from any vessel for commercial purposes on which finfish are also present unless at least one person on board has a valid finfish trap permit issued to that person pursuant to Section 9001.5 that has not been suspended or revoked and every person on board has a valid lobster permit issued pursuant to Section 8254 that has not been suspended or revoked and is in compliance with this article and Article 5 (commencing with Section 8250) of Chapter 2 and the regulations adopted pursuant to these articles. Lobster shall not be used as bait in finfish traps, and any lobster found in finfish traps that may not be possessed pursuant to this article or Article 5 (commencing with Section 8250) of Chapter 2 shall be returned to the water immediately.

(2) During the period from one hour after sunset to one hour before sunrise finfish traps that are left in the water shall be unbaited with the door secured open. However, if, for reasons beyond the control of the permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(3) Timed buoy release mechanisms commonly termed “popups” shall not be used on buoy lines attached to finfish traps.

(4) Trap destruction devices used on finfish traps shall conform to the current requirements for those devices adopted by the commission.

(5) No finfish traps shall be within 750 feet of any pier, breakwall, or jetty in District 19, 19A, 19B, 20, 20A, 20B, or 21.

(6) Not more than 50 finfish traps may be used in state waters along the mainland shore.

(7) The mesh of any finfish trap shall measure two inches by two inches.

(b) The fee for the finfish trap permit issued pursuant to Section 9001.5 is one hundred ten dollars (\$110).

(c) Notwithstanding paragraphs (2), (4), (5), (6), and (7) of subdivision (a), under a finfish trap permit issued pursuant to Section 9001.5 and a hagfish permit issued pursuant to Sections 8397 and 8397.1, Korean traps, defined as molded plastic cylinders not exceeding 6 inches in diameter and 24 inches in length, or “bucket traps” constructed of plastic buckets of five gallons or less in capacity,

may be used to take only hagfish. When Korean traps or bucket traps are being used or possessed aboard a boat, no species of finfish other than hagfish shall be taken, possessed aboard a boat, or sold for commercial purposes.

(d) This section shall become inoperative on April 1, 2002, and as of January 1, 2003, is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

